IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

CRL.REF.No. 3 of 2007()

CRA.34/1997 of SESSIONS COURT, PALAKKAD

.....

APPELLANT/ACCUSED.

SUDEVAN - AGED 38 YEARS,
S/O.KUNCHELAN, MALAKULAM,
ALATHUR, PALAKKAD DISTRICT.

RESPONDENTS/COMPLAINANT:

STATE REPRESENTED BY THE
SUB INSPECTOR OF POLICE,
ALATHUR.
ALATHUR POLICE STATION, CRIME NO.232/90

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL REFERENCE HAVING BEEN FINALLY HEARD ON 08/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

Criminal Reference No.3 of 2007

Dated this the 8th day of March 2007

O R D E R

This criminal reference has been registered on the basis of a communication received from the Additional Sessions Judge, Fast Track Court-I, Palakaad through the learned Sessions Judge, Palakkad.

2. One Sudevan was the accused in C.C.No.132/1994 before the Judicial First Class Magistrate Court, Alathur. He was found guilty convicted and sentenced under Section 324 I.P.C by the learned Magistrate.

3. An appeal was preferred by the said accused through a counsel and the same was registered before the learned Sessions Judge as Crl.A.No.34/1997. That appeal was made over by the IInd Addl.Sessions Court, Palakkad and the learned Judge, by judgment dated 16/6/2000, allowed the appeal and set aside the conviction and sentence passed by the lower court, it is reported.

4. On 31/5/2004, another appeal was again preferred by the same accused before the learned Sessions Judge along with

an application to condone the delay. There was a delay of 2669 days. The learned Sessions Judge had condoned the delay and admitted the appeal. The same was numbered as Crl.A.No.250/04. The learned Sessions Judge made over that appeal to the learned Additional District and Sessions Fast Track Court-I. On going through the records, the learned Additional Judge found that the appeal had already been disposed of and the verdict of guilty and conviction had been set aside. The learned Additional Judge, in these circumstances, initiated steps against the accused for filing a false affidavit.

5. Crl.Appeal No.250 of 2004 continues to be pending before the learned Additional District & Sessions Judge. The learned Additional District & Sessions Judge thought it fit to make this reference because according to him, he is bound to dispose of the appeal on merits. A criminal appeal filed cannot be disposed of except on merits and it is, in these circumstances, that the learned Additional Sessions Judge has requested this Court to quash the proceedings in Crl.A.No.250/04, reports the learned Sessions Judge.

6. Notice was issued to the accused/appellant. He did not appear before the court below and has not chosen to appear

before this Court also.

7. I fail to understand the basis of the reference. If the submission of the learned Additional Sessions Judge is correct, there is no verdict of guilty, conviction or sentence, the same having already been set aside by judgment dated 16.06/2004 in Crl.A.No.34 of 1997. If that be so, the learned Judge has only to dismiss the second appeal ie. Crl.A.No.250 of 2004 as unnecessary as the impugned judgment is already set aside. That would certainly be a disposal on merits and not a disposal for default. The theory/principle that the appeal preferred unless dismissed at the threshold must be disposed of on merits does not at all militate against the powers of the Sessions Court to dismiss an appeal as not maintainable or unnecessary. An appeal once admitted cannot of course be dismissed for default on the ground of non prosecution or on the ground of non appearance of the appellant to prosecute the appeal. But that is far from saying that the learned appellate Judge after going through the materials cannot come to a conclusion that the appeal is not maintainable or is not necessary for any valid reason. The decisions in U.J.S.Chopra v. State of Bombay [A.I.R 1955 S.C 633] as also Madho Singh v. The State [A.I.R 1957

Rajasthan 204] indicate that a second appeal is not maintainable and is bound to be dismissed. In the instant case, the dismissal must be by the learned Sessions Judge and that too for the reason that the appeal is now unnecessary in view of the earlier judgment dated 16.06.2000.

8. I do not, in these circumstances, find any merit in this reference. I make it clear that I have not verified the factual details and it is for the learned Additional Sessions Judge to verify records and ascertain the precise facts. On the facts narrated in the letter of reference, it is not necessary to entertain this reference made by the learned Sessions Judge.

9. This reference is accordingly answered. The learned Sessions Judge shall proceed to dispose of the appeal on merits. Even if it is found that the impugned judgment has already been set aside in an earlier appeal, the learned Magistrate must dismiss the appeal on the ground that the appeal has become unnecessary now in view of the earlier judgment.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006